

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COLORADO-ARKANSAS-TEXAS
DISTRIBUTING, L.L.C.,

Plaintiff,

Civil Action No.
06 CIV. 01937 (RCC)(FM)

-against-

AMERICAN EAGLE FOOD PRODUCTS,
INC.,

Defendant.
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Plaintiff COLORADO-ARKANSAS-TEXAS DISTRIBUTING, L.L.C. (“Plaintiff” or “CAT”), by the undersigned, as and for its Reply to the Counterclaim of Defendant AMERICAN EAGLE FOOD PRODUCTS, INC. (“Defendant” or “AEFP”), hereby alleges as follows:

1. In reply to Paragraph “1” of Defendant’s Counterclaim, admits that removal took place of this action from the Supreme Court of the State of New York, County of New York, but lacks information sufficient to form a belief as to the truth or falsity of the additional allegations contained therein, directing the Court to the citations therein.

2. In reply to Paragraph “2” of Defendant’s Counterclaim, lacks information sufficient to form a belief as to the truth or falsity of the allegations contained therein, directing the Court to the citations therein.

3. In reply to Paragraph “3” of Defendant’s Counterclaim, lacks information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and on this basis, denies said allegations.

4. In reply to Paragraph “4” of Defendant’s Counterclaim, denies the allegations contained therein.

5. In reply to Paragraph “5” of Defendant’s Counterclaim, admits the allegation that it is a member of the Association of Food Industries, Inc, and lacks information sufficient to form a belief as to the truth or falsity of the additional allegations contained in said Paragraph, and on this basis denies said additional allegations.

6. In reply to Paragraph “6” of Defendant’s Counterclaim, denies the allegations therein contained.

7. In reply to the first sentence of Paragraph “7” of Defendant’s Counterclaim, denies the allegations therein contained, and in reply to the second sentence of Paragraph “7” of Defendant’s Counterclaim, lacks information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and on this basis, denies said allegations.

8. In reply to Paragraph “8” of Defendant’s Counterclaim, lacks information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and on this basis, denies said allegations. No Exhibit “A” was annexed to the service copy of the “Answer, Defenses and Counterclaim”.

9. In reply to Paragraph “9” of Defendant’s Counterclaim, denies the allegations therein contained.

10. In reply to Paragraph “10” of Defendant’s Counterclaim, lacks information sufficient to form a belief as to the truth or falsity of the allegations contained therein, and on this basis, denies said allegations.

11. In reply to Paragraph “11” of Defendant’s Counterclaim, repeats and incorporates herein its reply to Paragraphs “1” though “10” of said Counterclaim, as if fully set forth herein at length.

12. In reply to Paragraph “12” of Defendant’s Counterclaim, denies the allegations

therein contained.

13. In reply to Paragraph “13” of Defendant’s Counterclaim, denies the allegations therein contained.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

14. The Defendant’s Counterclaim fails to set forth a cause of action or claim on which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

15. No alleged agreement or agreement(s) between CAT and AEF, and/or between CAT and any other person or entity in these circumstances, was ever entered into and/or concluded, whether to arbitrate or in the alternative, for any other purpose.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

16. Defendant pleads the affirmative defense of the statute of frauds.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

17. In these circumstances, CAT did not submit, nor did it agree to submit, to the jurisdiction of the alleged arbitral body and in addition, CAT did not waive its right to vacate, contest or otherwise object to same before a court of law.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

18. Further, in these circumstances, and as a result, the arbitrators had no power to determine the alleged dispute.

WHEREFORE, Defendant COLORADO-ARKANSAS-TEXAS DISTRIBUTING,

L.L.C. respectfully requests that this Court dismiss with prejudice the Counterclaim of Defendant AMERICAN EAGLE FOOD PRODUCTS, INC., vacate the alleged arbitration award, and grant such other and further relief as to this Court seems just and proper.

Dated: New York, NY
April 7, 2006

Respectfully,

/s/ Ira Kleiman
Ira Kleiman, Esq. (IK-6657)
Richard E. Carmen, Esq. (REC-6906)
BRIEF CARMEN & KLEIMAN, LLP
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(212) 758-6160 or (212) 832-5570

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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COLORADO-ARKANSAS-TEXAS	:	
DISTRIBUTING, L.L.C.,	:	
	:	Civil Action No.
Plaintiff,	:	06 Civ. 01937 (RCC)(FM)
	:	
-against-	:	CERTIFICATE OF
	:	<u>SERVICE</u>
AMERICAN EAGLE FOOD PRODUCTS,	:	
INC.,	:	
	:	
Defendant	:	
-----		X

1. IT IS HEREBY CERTIFIED THAT on the 7th day of April 7, 2006, a true and correct copy of the foregoing REPLY TO COUNTERCLAIM was served upon the following persons by first class mail, in a postage pre-paid envelope deposited in an official depository of the United States Post Office, in the City, County and State of New York, addressed to said persons at their office address as set forth below their names:

Charles R. Cohen, Esq.
701 Route 46 East, Suite 101
Fairfield, NJ 07004
Attorney for Defendant

2. That undersigned certifies the foregoing statement to be true under the penalties of perjury.

Dated: New York, NY
April 7, 2006

Richard E. Carmen
/S/_____
RICHARD E. CARMEN, ESQ. (REC-6906)
(REC-6906)